

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

ERIC D. AYERS,

Plaintiff,

v.

Civil Action No. 2:14-cv-28753

CORPORAL SINGLETON,

Defendant.

MEMORANDUM OPINION AND ORDER

This action was previously referred to Dwane L. Tinsley, United States Magistrate Judge, who has submitted his Second Proposed Findings and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B).

On March 27, 2017, the magistrate judge entered his first Proposed Findings and Recommendation, recommending dismissal of plaintiff's claims without prejudice. Notice to the plaintiff at his last reported address was returned as undeliverable. On July 11, 2017, plaintiff notified the court of his new address at the Metro Detention Center in Albuquerque, New Mexico. Under the assumption that plaintiff had not received the first Proposed Findings and Recommendation, and treating his filing of an updated address as an indication that he wished to proceed, this court again referred the matter to Judge Tinsley by order filed October 19, 2017.

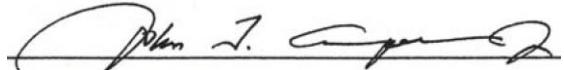
Order and Notice was entered on October 23, 2017, directing the plaintiff to file a new Application to Proceed Without Prepayment of Fees and Costs by November 27, 2017. Notice of both this court's order and the Order and Notice were returned as undeliverable. Plaintiff failed to file a new Application to Proceed by the required date and has not provided a new address.

The court has reviewed the Second Proposed Findings and Recommendation entered by the magistrate judge on December 5, 2017. The magistrate judge again recommends that the court dismiss the plaintiff's complaint, without prejudice, pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. Notice sent to the plaintiff was returned as undeliverable. The plaintiff, proceeding pro se, has not objected to the Second Proposed Findings and Recommendation.

The plaintiff having failed to keep the court advised of his current whereabouts and having failed to object to either of the Proposed Findings and Recommendations, it is ORDERED that the Second Proposed Findings and Recommendations be, and hereby is, adopted by the court for the reasons set forth therein, and that the plaintiff's action be, and hereby is, dismissed without prejudice.

The Clerk is directed to forward copies of this written opinion and order to the pro se plaintiff, all counsel of record, and the United States Magistrate Judge.

ENTER: January 5, 2018



John T. Copenhaver, Jr.
United States District Judge